

REMARKS

The claims are 1, 2, 4 and 7. Claims 3, 5, 6 and 8 to 16 have been canceled without prejudice, pursuant to the earlier restriction requirement. Claims 1, 2, 4 and 7 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the requirement for a written description. Further, Claims 1, 2, 4 and 7 stand rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not disclosed in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

These rejections are traversed in their entirety in view of the amendments made above and the arguments which follow.

With regard to the written description requirement, it is well settled law that a suitable deposit of the relevant microorganisms satisfies the requirement, as the examiner has noted. In the present application, a suitable deposit has been made and this requirement has been met. Evidence of the deposit was provided in response to the last Office Action. However, the Examiner has required a specific representation with respect to the conditions of the deposit, and it is the Applicants purpose to make herein those specific representations.

Thus, Applicants, through their undersigned attorney, specifically represent herein that:

- a) during the pendency of this application, access to the deposit will be afforded to one determined by the Commissioner to be entitled thereto;
- b) all restrictions imposed by the depositor on the availability to the public of the deposited material will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained for a term of at least thirty (30) years and at least five (5) years after the most recent request for furnishing of a sample of the deposited material;
- d) a viability statement in accordance with the provisions of 37 C.F.R. § 1.807 has been provided; and,
- e) the deposit will be replaced should it become necessary due to inviability, contamination or loss of capability to function in the manner described in the specification.

With regard to the second ground of rejection, Applicants submit that this rejection has been overcome with the Amendments made to the Specification above. The strain of microorganism which is the subject of the claim was examined by the Deutsche Sammlung Mikroorganismen und Zellkulturen GmbH and the substance of their report, identifying the strain as a new species within the *Burkholderia* genus, has been added to

the disclosure. It is submitted that this information is supplemental and clarifying to the Specification as filed, and, in any case, is merely further descriptive of the microorganism on deposit. It is further submitted that no new matter is introduced thereby.

WHEREFORE, in consideration of the above amendments and arguments,
examination and allowance are respectfully requested.

Apr. 27, 2004
Date:

Respectfully,



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